Before the

STATE OF ILLINOIS

ILLINOIS COMMERCE COMMISSION

In the Matter of Global NAPs Illinois, Inc. Petition for Arbitration Pursuant to Section 252(b) of the Telecommunications Act of 1996 to Establish an Interconnection Agreement with Verizon North Inc, *f/k/a* GTE North Incorporated and Verizon South Inc. *f/k/a* GTE South Incorporated	**Case No.: 02-0253**

INITIAL BRIEF OF THE PETITIONER, GLOBAL NAPS ILLINOIS, INC.

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I. Introduction.

On January 19, 2001, petitioner, Global NAPs Illinois, Inc. ("Global") opened negotiations with Verizon North, Inc. ("the ILEC") regarding the terms of interconnection agreement. Pursuant to an agreed upon schedule, Global filed for arbitration on April 10, 2002.[1] At the time of filing, the Global and the ILEC had several unresolved issues. Continued negotiation led to resolution of all but three basic issues regarding inter-carrier compensation and several issues unrelated to inter-carrier compensation. The inter-carrier compensation issues are: (1) whether the ILEC can impose origination fees to recover transport costs for carrying their customers' traffic on their side of the network when Global elects to interconnect via a single point of interconnection under §251(c)(2) ("Transport"); (2) whether the ILEC can impose access or transport charges on Global when it utilizes virtual NXX codes[2] ("VNXX"); and (3) whether the ILEC can impose access charges on Global for terminating Global's local traffic when Global offers LATA wide local calling area service ("Local Calling Area").

Global contends that under federal law and consistent with sound public policy: (1) Transport: each party should be responsible for the costs associated with transporting its own traffic to the POI; (2) VNXX: Global should be permitted to assign its customers NXX Codes that are "homed" in a central office switch outside of the local calling area in

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[1] The Petition was filed pursuant to § 252(b) of the *Communications Act of 1996,* 47 U.S.C. § 151 *et seq.* ("*1996 Act*").

[2] Foreign Exchange ("FX") Service is a telecommunications service that has been available for years and is simply a response to customer demand for dial tone in an exchange separate from the customer's physical location. Users of FX service typically desire to establish a local business presence in an area other than their physical location, and have typically determined that the ability to be reached via a local call is an integral component of that business presence. The same functionality is provisioned through the use of Virtual NXX Codes ("VNXX"), which rates a call as to one exchange but routes the call to a separate exchange.

which the customer resides without imposition of origination charges; and, (3) Local Calling Area: Global should be permitted to broadly define its own local calling areas without imposition of access charges.

In the following memorandum, Global explains (A) why federal law mandates these results, (B) why they are consistent with sound public policy, (C) why federal law prohibits the interconnection agreement from imposing any origination fees on or otherwise regulating ISP-bound traffic, and (D) why law and policy support Global's positions on the remaining issues.

II. Argument.

The FCC explained the purpose of the *1996 Act* as follows:

> The Telecommunications Act of 1996 fundamentally changes telecommunications regulation. In the old regulatory regime government encouraged monopolies. In the new regulatory regime, we and the states remove the outdated barriers that protect monopolies from competition and affirmatively promote efficient competition using tools forged by Congress. Historically, regulation of this industry has been premised on the belief that service could be provided at the lowest cost to the maximum number of consumers through a regulated monopoly network. State and federal regulators devoted their efforts over many decades to regulating the prices and practices of these monopolies and protecting them against competitive entry. The 1996 Act adopts precisely the opposite approach. Rather than shielding telephone companies from competition, the 1996 Act requires telephone companies to open their networks to competition. ... The *Act directs us and our state colleagues to remove not only statutory and regulatory impediments to competition, but economic and operational impediments as well.*[3]

To permit true local competition, the *1996 Act's* mandate to remove statutory, regulatory, economic and operational impediments must be aggressively pursued. In the

[3] *Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 F.C.C.R. 15499 P. 1-3 (1996) (*"Local Competition Order"*).

instant case, this means that Global's rights under the *1996 Act* and under the Rules,[4] must be strictly enforced.

A. Federal law prohibits the imposition of origination charges or access charges on reciprocal compensation traffic.

1. The reciprocal compensation rules control inter-carrier compensation for reciprocal compensation traffic, which is all telecommunications traffic except exchange access traffic and information access traffic.

On August 29, 1996, the FCC established its rules implementing the *1996 Act* in the *Local Competition Order.*[5] The FCC established rules controlling inter-carrier compensation for local traffic, codified as Rules 701-717. Rule 701(a) stated: "The provisions of this subpart apply to reciprocal compensation for transport and termination of *local telecommunications traffic* between LECs and other telecommunications carriers." Rule 701(b)(1) states: "For purposes of this subpart, *local telecommunications traffic* means: (1) telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider *that originate and terminates within a local service area established by the state commission.*"

On April 27, 2001, the FCC issued its *ISP Remand Order.*[6] In the *ISP Remand Order* the FCC rejected the past focus on "local" traffic. The FCC stated:

> We modify our analysis and conclusion in the *Local Competition Order*. There we held that 'transport and termination of *local traffic* for purposes of reciprocal compensation are governed by sections 251(b)(5) and 251(d)(2). We now hold the telecommunications subject to those provisions are all such telecommunications not excluded by section 251(g)

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[4] 47 CFR §51.1 *et seq.* (hereafter "Rule XXX" shall refer to 47 CFR §51.XXX).

[5] 61 FR 45619 (Aug. 29, 1996).

[6] *In the Matter of Implementation of the Local Competition Provision in the Telecommunications Act of 1996: Intercarrier Compensation for ISP-Bound Traffic*, Order on Remand Report and Order, CC Docket No. 96-98 (rel. April 27, 2001) ("*ISP Remand Order*").

> in the local competition order, as the subsequent *Declaratory Ruling*, use of the phrase ' local traffic' created unnecessary ambiguities, we correct that mistake here.[7]

The FCC went on to explain that section 251(b)(5) imposes a duty on all local exchange carriers to establish reciprocal compensation arrangements for the transport and termination of telecommunications.[8] On its face, local exchange carriers are required to establish reciprocal compensation for transport and termination of all telecommunications they exchange with another telecommunications carrier, without exception.[9] However, the FCC concluded that a reasonable reading of the statute is that Congress intended to exclude the traffic listed in section 251(g) from the reciprocal compensation requirements of section 251(b) (5): "[t]hus, the statute does not mandate reciprocal compensation for 'exchange access, information access, and exchange service for such access ' provided to IXCs and information service providers."[10] Put affirmatively, "section 251(b)(5) applies to telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider that is not interstate or intrastate access traffic delivered to an IXC or an information service provider."[11] Consequently, under the *ISP Remand Order*, unless traffic is (a) interstate or intrastate access traffic delivered to an IXC, or (b) information access traffic, it is subject to section 251(b)(5) reciprocal compensation and all of the rules associated with reciprocal compensation traffic.

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[7] *Id.* ¶ 46.

[8] *Id.* ¶ 31.

[9] *ISP Remand Order* at ¶31.

[10] *Id.* ¶ 34.

[11] *Id.* ¶89 n. 177.

On May 3, 2002, the United States Court of Appeals for the District of Columbia Circuit in the *Worldcom ISP Decision*[12] rejected the FCC's conclusion that section 251(g) provided a basis for the actions taken by the FCC in the *ISP Remand Order*, but expressly recognized that other legal bases for the FCC's action may exist and expressly declined to vacate the rules established by the *ISP Remand Order*.[13] Pursuant to the *ISP Remand Order,* the Rules were amended effective May 15, 2001.[14] Rule 701(a) now reads "[t]he provisions of this subpart apply to reciprocal compensation for transport and termination of *telecommunications traffic* between LECs and other telecommunications carriers." Rule 701(b)(1) now states: "[f]or purposes of this subpart, *telecommunications traffic* means: (1) telecommunications traffic between a LEC and a telecommunications carrier other than a CMRS provider, *except for telecommunications traffic that is interstate or intrastate exchange access, information access, or exchange services for such access.*" Consequently, under the Rules as they now read, reciprocal compensation traffic, *i.e.,* traffic subject to Rules 701-717, is all telecommunications traffic except exchange access traffic and information access traffic. This begs the questions: (a) what is telecommunications traffic, (b) what is exchange access traffic, and, (c) what is information access traffic?

[12] *WorldCom, Inc. v. Federal Communications Comm'n., et al.*, No. 01-1218, Slip. Op. (D.C. Cir. May 3, 2002) ("*Worldcom ISP* Decision") at 6-7.

[13] *Id.*

[14] 66 FR 94 (May 15, 2001).

a. "Telecommunications traffic" is the transmission of information, unchanged, between points the user specifies.

In terms of the statutory definitions, the broadest category is "communications," which comes in two categories, wire and radio.[15] This is quite broad, and would include, without limitation television broadcasting, cable TV, satellite transmissions, and information services. Within the broad realm of "communications" is the narrower category of "telecommunications," which means "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sand and received."[16] Within this narrower, but still broad realm of "telecommunications," the statute lays out some particular definitions that do not purport to exhaustively delimit the field such as exchange access[17], interLATA service[18], telephone exchange service[19], and telephone toll service.[20]

b. "Exchange access traffic" is traffic subject to a separate toll charge.

Exchange access is defined by the Telecommunications Act as "the offering of access to telephone exchange services or facilities for the purpose of the origination or termination of telephone toll services."[21] The term "telephone toll service" means "telephone service between stations in different exchange areas for which there is made a

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[15] *See* 47 U.S.C. §§ 153(51) (wire communications), (33) (radio communications).

[16] *See* 47 U.S.C. § 153(43).

[17] *See* 47 U.S.C. §§ 153(16).

[18] *See* 47 U.S.C. §§ 153(21).

[19] *See* 47 U.S.C. §§ 153(47).

[20] *See* 47 U.S.C. §§ 153(48).

[21] 47 USC § 153 (16).

separate charge not included in contracts with subscribers for exchange service."[22] Consequently, traffic is only exchange access traffic when it is subject to a separate toll charge. The ILEC does not impose a separate charge on its customers for calls to Global customers rated within its customers' local calling area.[23] Consequently this is not exchange access traffic. [24]

If ILEC traffic to Global customers rated in the same local service area as the originating ILEC customer were to be treated as exchange access traffic, access charges would apply. This is wholly inconsistent with the purpose of access charges. As the FCC recognized:

> Access charges were developed to address a situation in which three carriers – typically, the originating LEC, the IXC, and the terminating LEC – collaborate to complete a long-distance call. As a general matter, in the access charge regime, the long-distance caller pays long-distance charges to the IXC, and the IXC must pay both LECs for originating and terminating access service.[25]

As there is no IXC involved[26] and neither party charges an end user a toll charge that might, in theory, provide revenue to ***pay*** an access charge, it would be completely inappropriate to treat such calls as exchange access traffic.

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[22] *See* 47 USC §§ 153 (48).

[23] Imposition of an additional charge for calls to Global subscribers rated in the same local calling area would be discriminatory and violate 47 U.S.C. § 251 (c)(2)(D) and 47 CFR §51.305(a)(5).

[24] If the ILEC did impose separate toll charges, they would owe Global terminating access charges for completing their calls.

[25] *LCO* at ¶ 1034.

[26] Recently, the D.C. Circuit explained the role of an IXC as follows: "Long-distance telephone carriers (also called "interexchange carriers" or "IXCs") generally do not directly connect to their telephone customers. Rather, long-distance telephone traffic is ordinarily transmitted by a local exchange carrier (also called a "LEC") from its originating customer to an IXC. Then the "IXC carries the traffic to its region of destination and hands it off to the LEC there. For example, if a customer in Washington, D.C., who subscribes to Verizon for local service and AT&T for long-distance service, calls a relative in Florida, who subscribes to Bellsouth for local service, the call initially will travel over Verizon's facilities. Verizon will hand off the call to AT&T's facilities, which will carry the call to Florida before handing it off to Bellsouth's facilities for delivery to the caller's relative. AT&T will charge the caller for the telephone call,

c. "Information access traffic" is traffic routed by a LEC to or from information access providers.

The FCC explained what information access traffic entails in the *ISP Remand Order*:

> Under the consent decree, "information access" was purchased by "information service providers" and was defined as "the provision of specialized exchange telecommunications services... in connection with the origination, termination, transmission, switching, forwarding or routing of telecommunications traffic to or from the facilities of the provider of information services." We conclude that this definition of "information access" was meant to include *all access traffic that was routed by a LEC "to or from" providers of information services, of which ISPs are a subset.*[27]

Consequently, traffic is reciprocal compensation traffic unless it is toll traffic or is routed to an information service provider.

2. The reciprocal compensation rules prohibit imposition of origination charges or access charges on reciprocal compensation traffic and require payment of reciprocal compensation for terminating this traffic.

The regulatory framework created by the FCC for inter-carrier compensation of telecommunications traffic is found in Rule 703. Rule 703 states:

> Reciprocal compensation obligation of LECs.
>
> (a) Each LEC shall establish reciprocal compensation arrangements for transport and termination of telecommunications traffic with any requesting telecommunications carrier.
>
> (b) A LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network.

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and will pay "originating" access charges to Verizon and "terminating" access charges to BellSouth." *AT&T Corp. v. F.C.C.*, No. 01-1467 slip op (D.C. Cir. June 14, 2002).

[27] *ISP Remand Order* ¶ 44 (Emphasis added). The *Order* goes on to explain, "others have argued that the "information access" definition engraphs a geographic limitation that renders this service category a subset of telephone exchange service...[w]e reject that strained interpretation." *Id.* n.82.

Subsection (a) requires a LEC to establish reciprocal compensation arrangements for transport and termination of telecommunications traffic while subsection (b) precludes that same LEC from assessing charges for traffic that originates on its network. Absent subsection (b), subsection (a) would be meaningless as a LEC could impose origination charges that could wholly offset reciprocal compensation for termination and transport.

The FCC explained the basis of this regulation in the *Local Competition Order*:

> We conclude that, pursuant to section 251(b)(5), a LEC may not charge a CMRS provider or other carrier for terminating LEC-originated traffic. Section 251(b)(5) specifies that LECs and interconnecting carriers shall compensate one another for termination of traffic on a reciprocal basis. This section does not address charges payable to a carrier that originates traffic. *We therefore conclude that section 251(b)(5) prohibits charges* such as those some incumbent LECs currently impose on CMRS providers *for LEC-originated traffic*. As of the effective date of this order, a LEC must cease charging a CMRS provider or other carrier for terminating LEC-originated traffic and *must provide that traffic to the CMRS provider or other carrier without charge.*[28]

Rule 703 resolves the principal issues of this arbitration as it forbids the imposition of origination charges and establishes reciprocal compensation as the mechanism for inter-carrier compensation for reciprocal compensation traffic. As Global demonstrates below, Rule 703: (a) prohibits imposition of origination charges for ILEC originated intra-exchange traffic (Transport); (b) prohibits imposition of origination charges on VNXX traffic (VNXX); and (c) prohibits imposition of access charges on Global initiated telecommunications traffic (Local Calling Area); and (d) requires payment of reciprocal compensation for termination of reciprocal compensation traffic.

[28] *Local Competition Order* ¶ 1042 (emphasis added).

a. Transport: The reciprocal compensation rules prohibit imposition of an origination charge on intra-exchange traffic.

Consider first ILEC originated intra-exchange traffic. Although the ILEC does not deny that it must pay reciprocal compensation to Global for terminating this traffic, it claims it should be able to impose an origination charge on this traffic to pay for transport on its side of the POI. This is a clear violation of Rule 703(b).

Intra-exchange traffic is telephone exchange service:

> The term "telephone exchange service" means (A) service within a telephone exchange, or within a connected system of telephone exchanges within the same exchange area operated to furnish to subscribers intercommunicating service of the character ordinarily furnished by a single exchange, and which is covered by the exchange service charge, or (B) comparable service provided through a system of switches, transmission equipment, or other facilities (or combination thereof) by which a subscriber can originate and terminate a telecommunications service.[29]

As this is telephone exchange service traffic and not toll traffic, or traffic routed to an information service provider, it is reciprocal compensation traffic and cannot be subject to origination charges.

This is true even though Global elects to interconnect with the ILEC at a single point in the LATA. As the FCC explained in its *Kansas/Oklahoma 271 Order,*[30] Rule 51.703 (b) applies to cases involving a single POI:

> Nor did our decision to allow a single point of interconnection change an incumbent LEC's reciprocal compensation obligations under our current rules. For example, these rules preclude an incumbent LEC from charging carriers for local traffic that originates on the incumbent LEC's network. These rules also require that an incumbent LEC compensate the other carrier for transport and

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[29] 47 U.S.C. §153 (47).

[30] *In the Matter of Joint Application by SBC Communications, Inc. et al. for Provision of In-Region, InterLATA Services in Kansas and Oklahoma*, Memorandum Opinion and Order CC Docket No. 00-217, (rel. Jan. 22, 2001)(" *Kansas/Oklahoma 271 Order*").

termination for local traffic that originates on the network facilities of such other carrier.[31]

In the *Intercarrier Compensation NPRM*[32], the FCC stated:

> *Our current reciprocal compensation rules preclude an ILEC from charging carriers for local traffic that originates on the ILEC's network.* These rules also require that an ILEC compensate the other carrier for transport and termination for local traffic that originates on the network facilities of such other carrier. Application of these rules has led to questions concerning which carrier should bear the cost of transport to the POI, and under what circumstances an interconnecting carrier should be able to recover from the other carrier for costs of transport from the POI to the switch serving its end-user. In particular, carriers have raised the question whether a CLEC, establishing a single POI within a LATA, should pay the ILEC transport cost to compensate the ILEC for the greater transport burden it bears in carrying the traffic outside a particular local calling area to the distant single POI.[33]

Although the FCC recognizes the need to revisit this rule, at the same time, the FCC reiterates that the current rule applies.

Most recently, in a consolidated arbitration brought by AT&T, WorldCom & Cox Communications the FCC issued the *Virginia Order*[34], which considered the issue of transport. As the FCC is charged with interpreting and implementing the *1996 Act,* its Order is virtually a mandate for state commissions to follow in making their arbitration determinations on the same issues resolved therein. The *Virginia Order* rejected

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[31] *Id.* ¶ 235.

[32] *In the Matter of Developing a Unified Intercarrier Compensation Regime,* Notice of Proposed Rulemaking, CC Docket No. 01-92, FCC 01-132 (rel. Apr. 27, 2001) ("*Intercarrier Compensation NPRM*").

[33] *Id.* ¶ 112 (emphasis added).

[34] Memorandum Order and Opinion, *Petition of WorldCom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc. and For Expedited Arbitration,* CC Docket No. 00-218; *Petition of Cox Virginia Telecom, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc. and For Arbitration,* CC Docket No. 00-249; *Petition of AT&T Communications of Virginia, Inc. Pursuant to Section 252(e)(5) of the Communications Act for Preemption of the Jurisdiction of the Virginia State Corporation Commission Regarding Interconnection Disputes with Verizon Virginia Inc.,* CC Docket No. 00-218, DA 02-1731 (Re. July 17, 2002) ("*Virginia Order*").

Verizon's GRIPS and VGRIPs proposals based on an interpretation that Verizon cannot assess charges on its side of the point of interconnection:

> 51. We adopt the petitioners' proposed interconnection language, rather than Verizon's proposed language implementing its "GRIPS" and "VGRIPS" proposals.[116] We find that petitioners' language more closely conforms to the Commission's current rules governing points of interconnection and reciprocal compensation than do Verizon's proposals. Because we adopt the petitioners' proposals, rather than Verizon's, we also determine that WorldCom's motion and Cox's objection are moot with respect to Issue I-1.
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> 52. *Under the Commission's rules, competitive LECs may request interconnection at any technically feasible point.*[117] *This includes the right to request a single point of interconnection in a LATA.*[118] *The Commission's rules implementing the reciprocal compensation provisions in section 252(d)(2)(A) prevent any LEC from assessing charges on another telecommunications carrier for telecommunications traffic subject to reciprocal compensation that originates on the LEC's network.*[119] *Furthermore, under these rules, to the extent an incumbent LEC delivers to the point of interconnection its own originating traffic that is subject to reciprocal compensation, the incumbent LEC is required to bear financial responsibility for that traffic.* The interplay of these rules has raised questions about whether they lead to the deployment of inefficient or duplicative networks.[120] The Commission is currently examining the interplay of these rules in a pending rulemaking proceeding.[121] As the Commission recognized in that proceeding, incumbent LECs and competitive LECs have taken opposing views regarding application of the rules governing interconnection and reciprocal compensation.[122]
>
> 53. We find that the petitioners' proposed language more closely conforms to our existing rules and precedent than do Verizon's proposals.[123] Verizon's interconnection proposals require competitive LECs to bear Verizon's costs of delivering its originating traffic to a point of interconnection beyond the Verizon-specified financial demarcation point, the IP. Specifically, *under Verizon's proposed language, the competitive LEC's financial responsibility for the further transport of Verizon's traffic to the competitive LEC's point of interconnection and onto the competitive LEC's network would begin at the Verizon-designated competitive LEC*

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*IP, rather than the point of interconnection.*124 *By contrast, under the petitioners' proposals, each party would bear the cost of delivering its originating traffic to the point of interconnection designated by the competitive LEC. The petitioners' proposals, therefore, are more consistent with the Commission's rules for section 251(b)(5) traffic, which prohibit any LEC from charging any other carrier for traffic originating on that LEC's network; they are also more consistent with the right of competitive LECs to interconnect at any technically feasible point.*125 *Accordingly, we adopt the petitioners' proposals.*[35]

In other arbitrations, the ILEC has relied upon *MCI Telecommunications*,[36] *US West Communications*,[37] *Verizon-PA 271 Proceeding*,[38] and the *Louisiana/Georgia 271 Order*[39] as authority for its position. These cases may all be easily distinguished and predate the *Virginia Order*. *MCI Telecommunications* rejected a requirement by the Pennsylvania state commission that would have required WorldCom to establish multiple POIs for interconnection. The Court stated, "[t]o the extent, however, that Worldcom's decision on interconnection points may prove more expensive to Verizon, the PUC should consider shifting costs to Worldcom."[40] In that case, the Court had only the single POI issue before it, not the issue of whether WorldCom should pay transport and tandem

[35] *Virginia Order* at ¶¶ 51-53 (*emphasis added*).

[36] *MCI Telecommunications Corporation vs. Bell Atlantic-Pennsylvania*, 271 F.3d 491 (3rd Cir., 2001)("*MCI Telecommunications*").

[37] *U S West Communications, Inc. v. AT&T Communications, Inc.*, 31 F.Supp.2d 839 (D.Or. 1998)("*US West Communications*").

[38] *In The Matter Of Verizon Pennsylvania, Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc. And Verizon Selected Services, Inc. For Authorization To Provide In-Region Interlata Services In Pennsylvania*, CC Docket number 01-138, FCC 01-2 69 at ¶ 100 (rel. Sept. 19, 2001) ("*Verizon-PA 271 Order*").

[39] *In the Matter of Joint Application by Bellsouth Corporation, Bellsouth Telecommunications, Inc. and Bellsouth Long Distance, Inc. for Provision of In-Region, InterLATA Services in Georgia and Louisiana*, CC Docket No. 02-35, Memorandum Opinion and Order, FCC 02-147 (rel. May 15, 2002) ("*Louisiana/Georgia 271 Order*").

[40] *MCI Telecommunications* at 518.

switching charges to bring traffic to its single POI. There was no examination of Rule 51.703(b), and no ruling that Rule 703(b) violates the *1996 Act.*

Similarly, in *US West Communications,* the Court noted, "a reasonable argument can be made that additional compensation should be required of a carrier that seeks to interconnect in a manner that is extremely inefficient or exhausts existing network facilities."[41] Again, the issue of whether a CLEC that chooses a single POI per LATA should be required to pay transport and tandem switching charges was not before the court, and the court examine Rule 51.703(b) or make any determination regarding that rule. Further, *US West Communications* was decided in 1998, after the United States Court of Appeals for the Eighth Circuit vacated the FCC's pricing rules in 1997,[42] but before the Supreme Court reversed the Eighth Circuit in 1999.[43]

The *Verizon-PA 271 Proceeding Order*[44] states:

> The issue of allocation of financial responsibility for interconnection facilities is an open issue in our Intercarrier Compensation NPRM. We find, therefore that Verizon complies with clear requirement of our rules, i.e., that incumbent LECs provide for a single point of interconnection per LATA. Because the issue is open in our Intercarrier Compensation NPRM, we cannot find that Verizon's policies in regard to the financial responsibility for interconnection facilities failed to comply with its obligations under the Act.[45]

There can be no doubt that the issue of financial responsibility for interconnection facilities is an open issue in the *Intercarrier Compensation NPRM* — the NPRM sought

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[41] *Id.* at 853.

[42] *Iowa Utils. Bd. v. FCC*, 120 F.3d 753 (8th Cir. 1997), *aff'd in part and rev'd in part sub nom., AT&T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366, 119 S.Ct. 721, 142 L.Ed.2d 835 (1999) ("*Iowa Util. Bd.*").

[43] *AT&T corp. v. Iowa utilities Board*, 525 U.S. 366, 378-386 (1999).

[44] *In The Matter Of Verizon Pennsylvania, Inc., Verizon Long Distance, Verizon Enterprise Solutions, Verizon Global Networks, Inc. And Verizon Selected Services, Inc. For Authorization To Provide In-Region Interlata Services In Pennsylvania*, CC Docket number 01-138, FCC 01-2 69 at ¶ 100 (rel. Sept. 19, 2001) ("*Verizon-PA 271 Order*").

[45] *Id.* ¶ 100.

comments on this as well as many other issues for future rulemaking. Notwithstanding what the law may be in the future, the *Intercarrier Compensation NPRM* was abundantly clear that, "under our current rules, the originating telecommunications carrier bears the cost of transporting traffic to its point of interconnection with the terminating carrier."[46] From this we may only conclude that imposition of transport costs may not be enough to prevent an ILEC from obtaining interLATA authority under section 271 of the *1996 Act* — but nothing more.

Finally, the recent *Louisiana/Georgia 271 Order* makes only a passing comment, on regarding transport which supports Global's analysis of the *Verizon-PA 271 Order*: "[as] the Commission stated in prior section 271 orders, while the Commission will consider, in a section 271 proceeding, whether a BOC permits a requesting LEC to physically interconnect at a single Point Of Interconnection (POI), it will not attempt to settle new and unresolved disputes about the precise content of an incumbent LEC's obligations to its competitors - disputes that do not involve per se violations of self-executing requirements of the Act."[47] As in the *Verizon-PA 271 Order*, it is clear that the FCC will not look further into this issue in a section 271 proceeding—and nothing more. This by no means limits, nor could it limit, the unambiguous language of Rule 51.703(b) that "[a] LEC may not assess charges on any other telecommunications carrier for telecommunications traffic that originates on the LEC's network."

b. VNXX: The reciprocal compensation rules prohibit imposition of an origination charge on VNXX traffic.

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[46] *Intercarrier Compensation NPRM* at ¶ 70.

[47] *Id.* ¶ 208.

As explained above, reciprocal compensation traffic is any traffic that is not toll traffic, or traffic routed to an information service provider. VNXX traffic is not toll traffic. When an ILEC customer calls a Global FX customer, the calling party does not pay a toll charge; the customer pays the flat local rate. The VNXX traffic subject to the interconnection agreement is not routed to an information service provider,[48] so it is not information access traffic. Consequently, VNXX traffic is reciprocal compensation traffic.

Like intra-exchange traffic, VNXX traffic is telephone exchange service.[49] Standard industry practice establishes that FX traffic is telephone exchange service. When a carrier provides retail FX service, telephone numbers are assigned to end users within NPA/NXXs that are associated with ILEC local calling areas other than the location of the end user. The classification (local vs. toll) of traffic delivered from the foreign exchange to the FX customer is determined as if the end user were physically located in the foreign exchange. That is, the classification of the call is determined by comparing the rate centers associated with called and calling party's NPA/NXXs, not the physical location of the customers. If this comparison identifies the call as toll, it is treated as toll. If the comparison identifies the call as local, it is treated as local. This method of determining classification and the applicability of toll charges is used throughout the industry today and is the traditional method of making this determination. Global is not aware of a single state that has implemented a different method of distinguishing between local and toll traffic, and every carrier in the country, including

[48] As explained below, the interconnection agreement only deals with thoracic not routed to information service providers.

[49] Recall, reciprocal compensation traffic is a broader category than telephone exchange service, it includes all telecommunications except exchange access traffic and information access traffic.

the ILEC, adheres to this standard procedure. As VNXX traffic serves precisely the same function, it must also be treated as telephone exchange service.

As VNXX traffic is reciprocal compensation traffic, Rule 703(b) prohibits imposition of an origination charge. This means that the ILEC cannot charge transport or access charges for VNXX traffic. This is also consistent with the FCC's *Virginia Order* that rejected Verizon's proposal to rate calls base based not upon the originating and terminating central office codes, or NPA-NXXs, associated with the call but upon the geographic originating and end points of the call.[50]

c. Local Calling Area: The reciprocal compensation rules prohibit imposition of access charges on reciprocal compensation traffic.

Applying these rules to traffic originated by Global customers to be terminated by the ILEC, unless the traffic is exchange access or information access traffic, it must be reciprocal compensation traffic. As explained above, traffic is only exchange access traffic when a separate toll charge is imposed upon it. As Global shall impose no toll charge on traffic originating in terminating within the LATA, its traffic is not exchange access traffic. As it is not exchange access traffic, the ILEC may not demand access charges for terminating this traffic.

d. The reciprocal compensation rules do not permit imposition of origination charges or access charges on reciprocal compensation traffic to fund implicit subsidies or universal service.

In other proceedings, ILECs have argued that state commissions must protect ILEC toll revenue so the ILEC may use this revenue to subsidize local service. For example, in an arbitration in California Verizon submitted a Statement which said: "[t]he commission specifically recognized that Verizon's rate design reflects the guiding principle that residential basic exchange rates are set below their cost 'in order to continue progress to achieve universal service goals of this Commission.' The commission further recognized that Verizon's toll rates 'have historically been used to subsidize low rates for basic exchange service.' Nevertheless, the Commission committed to giving Verizon 'a fair opportunity to retain sufficient revenues to permit [it] to carry out [its] obligations to serve the public into further other worthy social goals."[51] From this, Verizon claimed in California that the Commission must permit it to impose origination charges and access charges on reciprocal compensation traffic to facilitate its implicit subsidy of basic service.[52]

Absolutely nothing in the reciprocal compensation rules permits the imposition of an origination charge or an access charge on reciprocal compensation traffic to "further... worthy social goals." Instead, the *1996 Act*, and recent case law prohibit this anticompetitive practice.

47 USC § 254(e) states, in part:

> After the date on which Commission regulations implementing this section take effect, only in eligible telecommunications carrier designated under section 214 (e) shall be eligible to receive specific federal universal service support. A carrier that receives such support shall use that support only for the provision, maintenance, and upgrading of facilities and services for which the support is intended. *Any such support should be explicit* and sufficient to achieve the purposes of this section.

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[50] *Virginia Order* ¶¶ 286-288.

[51] *In The Matter Of Global NAPs, Inc. (U-6449-C) Petition For Arbitration Of The Interconnection Agreement With Verizon California, Inc. F/K/A GTE California, Inc. Pursuant To Section 252(B) Of The Telecommunications Act Of 1996,* Statement of Verizon California, Inc. at 8 (Ca.P.U.C. May 29, 2002).

[52] It is truly amazing that ILECs simultaneously look to commissions to protect their toll revenue so they can subsidize basic residential service and then complain that CLECs are not real telephone companies because they do not provide basic residential service.

(Emphasis added). Subsection (f) states that a "State may adopt regulations not inconsistent with the Commission's rules to preserve an advance universal service." The FCC adopted its regulations implementing section 254 in 1997.[53] On May 3, 2002, the United States Court of Appeals for the Fifth Circuit specifically held that the FCC cannot maintain any implicit subsidies whether on a permissive or mandatory basis.[54] As a state's regulations cannot be inconsistent with the Commission's rules, it follows that states cannot maintain any implicit subsidies whether on a permissive or a mandatory basis. Consequently, if the ILEC were to subsidize basic residential service through the use of origination fees or access fees on reciprocal compensation traffic, it would be in violation of section 254(e) and (f).

Similarly, under section 254(k), "a telecommunications carrier may not use services that are not competitive to subsidize services that are subject to competition." There is little doubt that basic residential service is, or at least should be, subject to competition. When the ILEC makes use of origination fees or access fees on reciprocal compensation traffic it is using services that are not competitive to subsidize services that are subject to competition in violation of the statute.

Finally, common sense says that there will never be true competition for basic residential service if the ILEC is permitted to subsidize this service.

e. The reciprocal compensation rules require payment for termination of reciprocal compensation traffic.

Rule 703(a) requires that "[e]ach LEC shall establish reciprocal compensation arrangements for transport and termination of telecommunications traffic with any

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[53] *Federal-State Joint Board On Universal Service*, 12 FCC Rcd 8776, 1997 W. L. 236 383 (1997).

requesting telecommunications carrier." Under this rule, each party must be compensated for the termination of the other party's reciprocal compensation traffic at reciprocal compensation rates. This applies equally to intra-exchange traffic (Transport), VNXX traffic (VNXX), and traffic from Global's LATA wide local calling area (Local Calling Area).

B. It is good public policy to reject the imposition of origination charges or access charges on reciprocal compensation traffic.

1. Transport: Each party should be responsible for the costs associated with transporting its own traffic to the POI.

From the beginning of paid telephony, the party placing the call has been responsible for paying for the call. When a call is placed, the caller makes and evaluates whether or not the call is local or toll; what the applicable cost is and determines to place the call armed with such knowledge. This same calling party's carrier(s) recover the cost of the call from him/her. The ILEC proposes that when their customers place calls to Global's customers, the ILEC will impose the costs associated with its own customers' originated calls on Global. This proposal turns the regulatory regime on its head. The ILEC is already recovering—should be recovering—the costs for these calls from its customers through its retail rates. There is no mechanism in place by which Global can recover these costs from the ILEC's customers. Moreover, if the ILEC did recover such costs from the Global, the ILEC would receive a windfall as it would have a double-recovery of the costs of the call, *i.e.,* from its own customer and again from Global. Finally, it is discriminatory for the ILEC to impose call origination charges on Global.

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[54] *COMSAT Corp. v. FCC*, 250 F. 3d 931, 939 (5^{th} Cir. 2002).

a. **The ILEC's size allows it to realize significant economies of scale which reduce the average incremental transport costs on a per line basis to a *de minimis* amount.**

Global's witness Scott Lundquist ("Lundquist") provided the Commission with an explanation of how economies of scope and scale affect the ILEC's transport costs.[55] Lundquist's testimony states that, although these are common to all telephone networks, they vary by degree.

> *Scale.* The overall cost of constructing and operating a telecommunications network is heavily affected by the overall volume of traffic and number of individual subscribers that the network is designed to serve; that is, telecom networks are characterized by substantial *economies of scale and scope*. As I have previously noted, CLECs serve a far smaller customer population and carry far less traffic than do ILECs. Because they are necessarily forced to operate at a far smaller scale, CLEC networks may exhibit higher average costs than ILEC networks.[56]

The converse is also true, *i.e.,* ILEC networks may exhibit lower average costs than CLEC networks. These differences are especially pronounced in terms of transport. "ILECs such as Verizon North may serve a million or more individual subscribers statewide and can thus afford to deploy relatively efficient, large-scale switching systems in close geographic proximity to their customers."[57]

Not only does the ILEC benefit from its sheer mass, but it also benefits from other factors.[58] It is common knowledge that transport costs have been declining precipitously

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[55] *See* Direct Testimony of Scott C. Lundquist at 15-18 (May. 16, 2002)("*Lundquist Direct*").

[56] *Id.*

[57] *Lundquist Direct* at 11.

[58] Testimony offered by Bell Atlantic/GTE in the 1998 FCC proceeding to consider the Joint Application of Bell Atlantic and GTE for approval of their merger indicated that following the merger the companies' costs of equipment purchases would decrease substantially due to the increased purchasing power of the newly formed company, Verizon, relative to that of a stand alone GTE. Specifically, the Declaration of Doreen Toben, Vice President and Controller of Bell Atlantic Corporation stated that the "merger of Bell Atlantic and GTE will produce substantial cost savings and revenue improvements that are hard, real, and certain." According

due to use of fiber optics. It is also common knowledge that incumbents have been deploying fiber at a rapid pace in their networks. The January 2001 issue of *Scientific American* reports that "the number of bits a second (a measure of fiber performance) doubles every nine months for every dollar spent on the technology."[59] Lundquist testified, "the cost per unit of transport is cut by 50% *every nine months*. Put another way, over the past five years, the cost per unit of telecommunications transport has fallen by more than 98%! Transport costs have become far less distance-sensitive and, with the use of high-capacity fiber optics, massive amounts of capacity can be deployed at little more than the cost of more conventional transport capacity sizes."[60] On a per access line forward-looking incremental basis, therefore, incumbents' transport costs are negligible, or as the Illinois Commerce Commission recently found, "*de minimus.*"[61]

b. The ILEC wishes to impose transport charges on Global that are orders of magnitude in excess of its costs.

Lundquist demonstrated the magnitude of the over-recovery of the ILEC's costs in his testimony.[62] As discussed above, "as a general matter, the costs of

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to Toben, Bell Atlantic had exceeded its projected savings and revenue enhancement resulting from its merger with NYNEX: "The very substantial cost savings estimated at the time of the Bell Atlantic-NYNEX merger were subsequently increased and the increased targets are being achieved." *Lundquist Direct* at 24 *citing In the Matter of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee For Consent to Transfer of Control*, Declaration of Doreen Toben, September 30, 1998, at ¶¶ 2 and 7.

[59] *Lundquist Direct,* Attachment 2 "The Triumph of Light" *Scientific American,* Gary Stix (Jan. 2001) at 81.

[60] *Lundquist Direct* at 12.

[61] Arbitration Decision, *Global Naps, Inc. Petition For Arbitration Pursuant To Section 252 Of The Telecommunications Act Of 1996 To Establish An Interconnection Agreement With Illinois Bell Telephone D/B/A Ameritech*, 01-07 86 (Ill.C.C. May 14, 2002) ("*Global Illinois Order*") at 8.

[62] *Lundquist Direct* at 7, 42.

transport have been dropping at an enormous rate in recent years and are strikingly different from the legacy costs ILECs are attempting to recover from CLECs."[63] Given the 50% drop in costs every nine months, regulatory lag is setting rates can significantly overstate appropriate transport rates. First, rates are set on prior period results. Thus, rates set even as recently as yesterday significantly overstate the incumbent's costs. As a result, a large disparity exists in the difference between the *cost* that The ILEC realizes for this incremental transport capacity on a forward-looking basis and the *rates* that it seeks to impose on CLECs today.

Lundquist uses a proxy model to evaluate the degree to which the ILEC may be over-recovering its transport costs. This model, discussed on pages 31 to 43 of his testimony, is not meant to be a cost study for the purpose of proposing a rate, but a tool to indicate the magnitude of disparity between the ILEC's transport costs and the transport charge the ILEC wishes to impose. Lundquist presents testimony showing that if the ILEC's charge was imposed, the incremental charge should be approximately $0.000020101, *i.e.*, about two thousandths of a cent.[64] Moreover, the ILEC's rates are well in excess of comparable ILECs. On page 40 of his testimony, Lundquist compares the ILEC's proposed rate[65] with that of SBC in Texas and BellSouth in Georgia.

Verizon – IL:	$30.27 per mile for DS-3 at a $0.000003401 incremental rate applied to the 5.91 average additional miles.

[63] *Lundquist Direct* at 12.

[64] *Lundquist Direct* at 35 & Table 3 of Attachment 3.

[65] Verizon Telephone Companies, Facilities for Interstate Access - Tariff FCC No. 14, Section 4.6.2(H), Fourth Revised Page 4-185, Effective March 12, 2002.

BellSouth – Georgia:	\$2.72 per mile for DS-3 at a \$0.0000174137 incremental rate applied to the 5.91 average additional miles.
SBC – Texas:	\$16.16 per mile for DS-3 at a \$0.000103458 incremental rate applied to the 5.91 average additional miles.

BellSouth cannot possibly be so much more efficient in Georgia than the ILEC is in Illinois, and if it is, this Commission should address this situation. The only reasonable explanation is that the rate the ILEC seeks to impose recovers well in excess of its costs.

If the ILEC is allowed to charge Global for transport between the single point of interconnection and the additional points that they designate, imposition of charges would still be limited by the requirements of §§ 251(c)(2)(C)and (D) of the *1996 Act*, which require that interconnection be at least equal in quality to that provided by the local exchange carrier to itself and on rates terms and conditions that are just, reasonable and nondiscriminatory. As the cost of additional transport stemming from a SPOI is *de minimis*, charges exceeding *de minimis* amounts are *de facto* discriminatory.

Recall, Lundquist's testimony is that the only difference between interconnection at the single point designated by Global as opposed to interconnection at the points designated by the ILEC was the additional transport cost incurred for transporting calls from the weighted average distance of its subscriber to the ILEC's end-office/tandem vs. transporting the call to the weighted average distance to the Global-designated point of interconnection. Lundquist explained that the incremental cost that the ILECs would incur to extend transport beyond the local calling area to a single POI in each LATA are *de minimis*, in large part reflecting the drastic reductions in unit costs for transport that advances in fiber optic transmission technology have produced.

Although a SPOI would result in only a *de minimis* increase in the ILEC's transport costs, the ILECs seek to impose excessive and discriminatory charges for this transport. This violates §§251(c)(2)(C)and (D) of the *1996 Act* and can preclude meaningful competition.

c. As the ILEC has been paid by it own customers to originate traffic, imposition of transport charges by the ILEC on Global would constitute a windfall for the ILEC.

When the ILEC's customer places a local call to another one of its customers within its local calling area, the ILEC either assesses a specific charge for that call (if the call is made under a measured service plan) or recovers the cost for that call in its basic local exchange service rate. In either scenario, *there is no additional transport or call origination fee imposed.* The ILEC proposes that if its customer places a call to a Global customer, however, Global should be assessed additional transport and/or a call origination fee. Thus, what the ILEC proposes is to double recover costs. Indeed, as the discussion above indicates, the ILEC proposes to recover well in excess of its costs from Global, in addition to the costs it recovers from its own retail customers.

While the ILEC insists that Global pay the transport costs from the SPOI to its virtual IPs, *i.e.*, end offices and/or tandems, it does not propose paying to Global for Global's transport costs. When moving from a multiple interconnection arrangement to a single POI interconnection arrangement, transport costs will increase on *both* the origination side and termination side of the POI. That is, regarding costs, transport to and from a single POI is symmetric in the sense that transport mileage from the local calling area to the POI is approximately equal to the transport mileage from the POI back to the local calling area.

Indeed, the transport costs on Global's side of the POI may well exceed those of the ILEC in its side of the POI.[66] Recall, the ILEC has the benefit of economies of scale which Global lacks. Lundquist testified that Global has lengthy transport to back-haul traffic to its switch, whereas the ILEC is "switch-heavy". In part, this is because it uses a legacy network design, while Global's network design is based on the more recent cost paradigm where "modern telecommunications technology has made the distance between a calling and called party almost totally irrelevant to the cost of handling a call."[67] Global often must transport traffic not only across the ILECs' tandems and LCAs, but LATAs and, in certain cases, entire states. Thus, not only are there transport costs for each carrier on its side of the POI, but, due to its network topology, Global's costs are likely to be greater than those of the ILEC. Nonetheless, the ILEC makes no allowance for these transport costs. Fundamental fairness requires that if the ILEC need not compensate Global for its transport costs, Global should not be required to compensate the ILEC for its transport costs especially as this results in double recovery for the ILEC.

d. The ILEC's proposal to impose a call origination fee and/or transport costs for calls terminated to Global's customers is anticompetitive.

Assuming, *arguendo*, that the Commission elects to allow the ILEC to impose its requested charges on Global when its customers place calls to Global's customers, the result could be the elimination of Global and other CLECs. The ILEC has not proposed any additional fees for its own customers when they call its other customers, or indeed, any other provider. Conversely,

[66] In some instances Global may have transport lengths less than those of the ILEC, but this is due to its use of expensive collocation in lieu of transport. The ILEC makes no proposal to pay any of Global's costs of providing collocation.

[67] *Lundquist Direct* at 7.

Global does not propose any similar charge to the ILEC when Global's customers originate local calls which terminate on the ILEC's network. Clearly, the result anticipated by the ILEC is discriminatory.

It is absurd to expect that Global should pay for both its transport costs as well as that of its competitor.[68] The insidious operation of these additional charges creates a price squeeze for Global. Shouldering the ILEC's costs as well as its own eliminates Global's ability to compete on the basis of its network efficiencies. Moreover, removing transport costs from competition provides no incentive to the ILEC to improve the efficiency of its own network.

Finally, if the ILEC receives approval to assess Global these additional fees, it has a "green light" to proceed with other carriers as well. The logical conclusion is that the ILEC will impose this cost on any and all CLECs it can.[69] Thus, the Commission's determination is not only critical for Global, it is important to the viability of competition in Illinois.

e. Illinois found previously and other state commissions have also concluded that each carrier should be responsible for transport on its own side of the POI.

Global's insistence that the ILEC pay for transport on its side of the point(s) of interconnection is consistent with the finding of this Commission as well as rulings of other state commissions. In the recent arbitration with SBC, Global fought the same

[68] If Global bears the ILEC's costs, the ILEC will have no incentive to control its transport costs. In fact, the reverse is true: the ILEC has an incentive to inflate costs that are imposed on its competitors. But of more importance, the ILEC wants Global to pay not its actual costs but its *rates*. This distinction is crucial.

[69] The addition of transport or call origination fees is especially crucial for smaller CLECs because larger CLECs such as AT&T and Worldcom CLEC subsidiaries have more installed trunking and in many cases

issue, *i.e.,* whether SBC can impose transport and other charges on Global for carriage of traffic on SBC's side of the point of interconnection. This Commission held that:

> [T]he Commission is of the opinion that Ameritech and Global should be responsible both financially and physically on its side of the single POI. Ameritech's arguments, while lengthy are not persuasive to require the adoption of the Ameritech proposal. The Commission concurs that the transportation of calls to a single POI in each LATA would not significantly increase transport costs, but rather the incremental costs that Ameritech would incur would be de minimus. Ameritech's position could have the effect of undermining the single POI requirement.[70]

If Global is required to bear transport costs on its side of the POI, the ILEC should likewise also be required to do so. Federal law envisions a more sensible compromise, that each carrier be responsible for transport costs on their own respective sides of the POI. Any determination other than this is contrary to federal law because it imposes costs only on the CLEC and is *de facto* discriminatory.[71]

The New York Commission dismissed Verizon's VGRIP proposal and Illinois should do so as well, just as it rejected SBC's claim for similar transport charges. There, as here, the Commission was asked to rule on Verizon's proposal requiring multiple interconnection points, or the financial equivalent thereof by virtue of making payment for transport from that single point to additional points. The New York Commission found that:

> Our orders establishing the framework for competition, recognize that CLEC networks would, in all likelihood, not mirror the incumbent's. This has proven to be correct, as most CLEC network designs use a single central office switch and long loops to serve a region, rather than the more traditional design of many switches and short loops. The policy established in our Competition II proceeding, that remains applicable,

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have multiple points of interconnection already established which enable them to avoid Verizon's proposed charges.

[70] *Global Illinois Order* at 8.

[71] *Id.*

> assumes that a carrier is responsible for the costs to carry calls on its own network.
>
> * * *
>
> We reject Verizon's proposal and shall keep in place the existing framework that makes each party responsible for the costs associated with the traffic that their respective customers originate until it reaches the point of interconnection.[72]

Other state commissions have rejected the imposition of call origination fees and/or transport fees based on a fictional separation of a financial interconnection point and the point of interconnection where traffic is actually exchanged.

2. VNXX: Global should be permitted to assign its customers NXX Codes that are "homed" in a central office switch outside of the local calling area in which the customer resides without imposition of origination charges.

Just as in the case of the right of Global to designate a single point of interconnection in a LATA and the issue of carriers' bearing financial responsibility on their respective sides of this point of interconnection, the FCC has made significant pronouncements on the use of non-geographically correlated NXX codes. Specifically, it rejected Verizon's attempt to develop a new rating system using end to end physical/geographical measurements to rate a call when it does not do so for itself and had no practical means to implement this awkward call rating regime.[73] As a result,

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[72] *Order Resolving Arbitration Issues, Joint Petition of AT&T Communications of New York, Inc., et al., Pursuant to Section 252(b) of the Telecommunications Act of 1996 for Arbitration to Establish an Interconnection Agreement with Verizon New York, Inc.*, Case 01-C-0095 (July 30, 2001) ("*NY AT&T Order*") at 27-28.

[73] Verizon conceded it was unable to implement its desired solution and offered no contract language to support such a call rating regime. *See Virginia Order* at ¶302.

Verizon's position was rejected and the CLECs' position allowing for use of non-geographically correlated NXX codes was adopted.[74]

a. Treatment of FX-like calls as telephone exchange service is consistent with standard industry practice.

Standard industry practice establishes that FX traffic is telephone exchange service. When a carrier provides retail FX service, telephone numbers are assigned to end users within NPA/NXXs that are associated with ILEC local calling areas other than the location of the end user. The classification (local vs. toll) of traffic delivered from the foreign exchange to the FX customer is determined as if the end user were physically located in the foreign exchange. That is, the classification of the call is determined by comparing the rate centers associated with called and calling party's NPA/NXXs, not the physical location of the customers. If this comparison identifies the call as toll, it is treated as toll. If the comparison identifies the call as local, it is treated as local. This method of determining classification and the applicability of toll charges is used throughout the industry today and is the traditional method of making this determination.

Global is not aware of a single state that has implemented a different method of distinguishing between local and toll traffic, and every carrier in the country, including the ILEC, adheres to this standard procedure. Yet Verizon proposes an end to end measure for determining whether to apply toll charges to customers who receive service using non-geographically coordinated ("virtual") NXX codes. The proposal that FX traffic be treated as toll traffic is inconsistent with the ILEC's own practice of categorizing the traffic as local. Moreover, as the FCC noted, Verizon's proposal is not

[74] *Virginia Order* at ¶ 301.

able to be implemented.[75] As a result, the FCC specifically rejected Verizon's proposal and endorsed the position that calls be rated based on their originating and terminating NXX codes.[76]

When the ILEC's customer calls the ILEC's FX customer, the calling party does not pay a toll charge; the customer pays the flat local rate. The call is rated based upon the NPA/NXXs – not the proposal under which the ILECs propose Global (and presumably other CLECs) labor.

Moreover, the proposal to treat FX-like calls as toll traffic is a departure from the ILECs' own method of determining a call's status as toll versus local. The applicable rate centers (and the associated distances) are determined by reference to the NPA-NXXs assigned to the called and calling parties, not the physical location of the customer. That is, the ILEC does not look at the street addresses (physical locations) of the customers involved in a particular call, but instead looks at the NPA-NXXs, identifies the rate centers to which the calling and called NPA-NXXs are associated, and, if those rate centers are not within the local calling area of each other, calculates mileage based on the V&H coordinates associated with the rate centers.

Indeed, this comparison of NPA-NXXs allows the ILEC to treat its own FX traffic as local, because *if* it made its determination based on the physical location of the calling and called parties, it would have to segregate its own FX traffic from all of its toll traffic in order to avoid billing toll charges, which it does not. This is clearly not the

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[75] "Verizon has failed to propose a workable method for rating calls based on their geographical end points, and it has alleged no abuse in Virginia of the process for assigning NPA-NXX codes." *Virginia Order* at 288.

[76] *Virginia Order* at ¶ 301.

ILEC's practice, and Global believes that calls originated from Global end users to the ILEC's assigned FX numbers would not only be treated by Global as local, but that the ILEC would bill Global for reciprocal compensation for the transport and termination associated with such FX calls rather than pay Global originating access.

There is no readily available information that tells a carrier the physical location of a calling or called party, (nor is one needed because there is no reason to draw any distinction between "traditional" local service and VNXX local service as there are no additional costs imposed when VNXXs are used). For instance, The ILEC's billing system does not identify each physical service location belonging to a single retail customer. There is, therefore, no reason to believe that carriers could readily obtain the information on which The ILEC proposes to rely and no reason to create this functionality.

b. FX-like service does not impose transport costs on other carriers.

FX-like calls impose no additional transport costs on the originating carriers. Whether or not the call from the ILEC customer is to an FX-like service customer of a CLEC, the originating carrier's responsibility is the same: to deliver traffic originating on its network to the POI with the CLEC network. The CLEC provides the facility linking the FX-like service customer to the CLEC switch. Therefore, Global's FX-like service generates the same costs that are involved with the delivery of any other local traffic to the POI(s).[77]

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[77] Lundquist's testimony described, by way of examples with diagrams how the "traditional" local call and a call using VNXXs were the same because "the ILEC's work — and its costs — are absolutely identical. The sole distinction between the two examples lies in what the *CLEC* does once it receives the call from ILEC at the POI. In the first case (Figure 1), the CLEC hauls (transports) the call all the way back from Bloomington to Pontiac; in the second case (Figure

The following example illustrates the similarity of the cost of FX-like calls and other local traffic.[78] Assume a call is made by a the ILEC customer in the Pontiac exchange and is delivered by the ILEC to a CLEC in Bloomington via a point of interconnection located in Pontiac. The CLEC's customer to whom the call was directed is also located in Pontiac, and so the CLEC needs to transport the call back to the delivery point in Pontiac. Now let's change the facts of this example. Assume the ILEC's Pontiac customer still dials a Pontiac telephone number (*i.e.*, a CLEC NPA-NXX that is rated to Pontiac), but instead of the CLEC delivering the call to a CLEC customer in Pontiac (as in the previous example), the CLEC delivers the call to a CLEC customer physically located in Bloomington. Note that the POI at which the ILEC hands off the call to the CLEC is still in Pontiac, but the point of delivery (Bloomington in this case) is not within the local calling area of the originating ILEC telephone. In both of these cases, the ILEC's work — and its costs — is absolutely identical. The sole distinction between the two examples lies in what the CLEC does once it receives the call from the ILEC at the POI. In both cases, the ILEC carries the call from the originating telephone to the Pontiac POI, and so its work is entirely unaffected by where the CLEC ultimately delivers the call. This example demonstrates that the originating carrier does not incur excessive transport costs for FX-like traffic, and such traffic imposes no "additional" burden on originating carriers.

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2), the CLEC delivers the call to a customer located near its Bloomington switch. In both of these cases, the ILEC carries the call from the originating telephone to the Pontiac POI, and so its work is entirely unaffected by where the CLEC ultimately delivers the call." *See Lundquist Direct* at 71.

[78] *Lundquist Direct* at 68-75.

This analysis does not change simply because an ILEC and a CLEC have established a single LATA-wide POI in Bloomington. Whether an incoming call is delivered to a CLEC customer located in Pontiac, or to a customer using an FX-Like service with physical delivery in Bloomington, the ILEC's responsibilities, and the costs it incurs, are absolutely identical in both cases.

c. FX-like service does not cause the ILEC to lose toll revenue.

Assertions that ILECs are losing toll revenues by not being able to bill originating customers toll rates for FX-like Calls are also incorrect. The very point of any FX service is to provide end users a *local* calling number for a particular business, and there is no reason to assume that this traffic would exist if it required a toll call. If the originating caller wants to call a local number for the service he or she seeks, it is likely that the customer would simply find a vendor with a local number and place that call rather than dial a toll number which would allow The ILEC to bill its toll charges. The customer, if confronted with a toll charge, would have been unlikely to make the call.[79] There is no loss of revenue if the customer is not able to, or would not choose to, make a call in the first place.[80] To the extent that The ILEC suffers any revenue losses resulting from competition, adjusting its prices can minimize these losses—just as any other competitor would do.[81] Instead of forgone revenue, this is a case of forgoing Internet access. The Commission should be promoting, not inhibiting, ubiquitous Internet access.

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[79] *Lundquist Direct* at 62-63.

[80] *Id.* at 63.

[81] *Id.* at 62.

d. Imposition of access charges on FX-like calls is discriminatory because it permits the ILEC to use virtual NXX while denying CLECs the ability to do this.

As explained above, the ILEC incurs no additional transport cost when Global provisions FX service via virtual NXXs. Notwithstanding this, the ILEC proposes economically punitive access charges on CLECs if they employ virtual NXX to provide FX-like service. This makes it economically impossible for CLECs to provide this service. Unlike CLECs, The ILEC is not hindered by reason of the access charge penalty. When the ILEC pays an access charge, it pays the access charge to itself (or affiliate). In other words, the ILEC's monopoly power with respect to intrastate toll traffic allows it to impose excessive charges on end users; while it "charges" access charges to itself by a mere journal entry. And as long as the monopoly remains unchallenged, it probably doesn't matter very much as a practical matter how the ILEC accounts for its revenues.[82]

But the emergence of competition changes the analysis — and the public policy calculus — significantly. To allow the ILEC to impose non-cost-based access charges on its competitors when they offer a service that might, arguably, in some small way erode the ILEC's iron grip on the intrastate toll market is, purely and simply, to throw the weight of regulatory policy behind the anti-competitive desires of the monopolist ILEC. Global submits that it is impossible to square such a policy with the pro-competitive policies of the *1996 Act*.

[82] Imputing costs also fails to constrain the monopoly's ability to impose costs on others while avoiding them itself. Although imputing such costs is interesting as an academic exercise, it is ineffective as a restraint mechanism between affiliates or in a master/subsidiary relationship.

In this regard, the ILEC has an incentive to set access charges as high as possible, because the distinction between recording a journal entry between the ILEC and its affiliates versus having competitors pay "real" cash becomes more pronounced the higher these charges are. This is not a true competitive advantage for the ILEC, but rather is a result of the rate design and implementation of such an access charge regime.

e. Global's position on its FX-like traffic is consistent with the current calling-party's-network-pays regime.

As noted above, a CLEC incurs termination costs to deliver an FX-like call to its customers. The current regulatory regime requires that CLECs be compensated for these termination costs. The FCC recently acknowledged this in the *Intercarrier Compensation NPRM,* where it stated: "[e]xisting access charge rules and the majority of existing reciprocal compensation agreements require the calling party's carrier, whether LEC, IXC, or CMRS, to compensate the called party's carrier for terminating the call. Hence, these interconnection regimes may be referred to as "*calling-party's-network-pays*" (or CPNP)".[83] Thus, the fundamental principle of the CPNP regime is that the party collecting the revenue for a call (*i.e.*, the originating party in the case of telephone exchange service) compensates the other party for the use of its network. Therefore, consistent with this principle, a carrier is lawfully entitled to recover its costs to terminate FX-like calls originating on the ILECs' networks. However, the ILEC's position that Global should compensate them in the form of access charges for FX-like calls when, in

[83] *In the Matter of Developing a Unified Intercarrier Compensation Regime*, Notice of Proposed Rulemaking, CC Docket No. 01-92, FCC 01-132 (rel. Apr. 27, 2001) ("*Intercarrier Compensation NPRM*") at ¶ 9; *see, also, ISP Remand Order* ¶46 (" [w]e now hold that telecommunications subject to those provisions [payment of reciprocal compensation under §251(b)(5) and §251(d)(2)] are all such telecommunications not excluded by section 251(g).") As FX-like Calls are not excluded by § 251 (g), they are subject to reciprocal compensation.

fact, the ILEC is collecting the revenue for these calls turns the current CPNP regime on its head.

3. Local Calling Area: Global should be permitted to broadly define its own local calling areas without imposition of access charges.

a. LATA wide local calling areas impose no additional costs on the ILEC.

As explained above, when the ILEC's customer calls a Global customer the ILEC's work is to hand that call off to Global at the SPOI. It makes no difference what Global does with the call after handoff, as the ILEC's work is complete upon handoff. This is why Global's FX-like service imposes no additional costs on the ILEC. Conversely, when the ILEC terminates a call originated by a Global customer, the ILEC's work is to pick up the call at the SPOI and deliver it within the LATA. It makes no difference what Global does before the call is handed off, as the ILEC's work does not begin until handoff. Consequently, it is completely irrelevant if the call originated from a location across the street from the location of the ILEC customer who is receiving the call or if it originated on the other side of the LATA. In either case, the ILEC picks up the call at the SPOI and delivers it to its customer.

Under the *1996 Act*, carriers have a "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications."[84] Consequently, the costs of transport and switching associated with terminating a call are paid by reciprocal compensation. So, when the ILEC picks up a call at the SPOI, and delivers it to its customer within the LATA, it is wholly compensated by reciprocal compensation regardless of where the call originated.

As explained above, a party terminating a call may get additional compensation, in excess of the reciprocal compensation rate, if it is paid terminating access charges for terminating the call. This windfall payment only applies to exchange access traffic, and as explained in section II.A.1.b. above, exchange access traffic is traffic subject to a separate toll charge. This separate toll charge is, in essence, shared by the IXC with the originating carrier and the terminating carrier. When there is no separate toll charge, it is not exchange access traffic, it is simply reciprocal compensation traffic, and the terminating carrier is compensated by reciprocal compensation.

LATA wide local calling areas promote competition and benefit the consumer. Global wants to offer LATA-wide local calling areas. Such an offering will allow Global to compete with both local providers as well as IXCs. Most importantly, it exerts downward pressure on the current monopoly-priced intraLATA access services by offering an innovative competitive telecommunications product. This is precisely the kind of competitive benefit that consumers have so long deserved, and has so long been denied.

One of the primary goals of introducing competition into the local telecommunications market has been specifically to encourage and stimulate innovation in the nature of the services that are being offered. In both technical and economic terms, there is no particular reason for the ILEC to maintain its present local calling areas, and certainly no reason whatsoever for a new competitor (not saddled with ILEC legacy network architecture and other archaic design decisions) to do so. Lundquist explained that the local versus toll distinction grew out of the architecture of the earliest telephone

[84] 47 USC § 251(b)(5).

networks. Originally, an exchange generally referred to the geographic areas served by a manual switchboard to which all of the telephone lines with any exchange were connected. An operator would complete local calls by physically plugging the calling party's line into the called party's line using a patch cord. If the call was destined to a customer served by different switchboard, the operator would signal the terminating switchboard and instruct the operator at that location as to which phone line the call was to be connected. For calls to nearby exchanges, direct lines would interconnect the individual switchboards; however, for longer distances, one or more intermediate switchboards would be involved in interconnecting trunks so as to achieve the desired end-to-end connection. Distance was a major factor in both the complexity and cost of individual calls.[85]

As explained above, the explosion in telecommunications technology over the past two decades, and particularly the enormous gains in fiber capacity has reduced the cost of telephone calls to a mere fraction of a cent per minute. It also has made any physical distinction that may have once existed between local and toll calls all but obsolete, and has essentially eliminated distance as a cost driver for all telephone calls.[86]

Global's evidence shows that there is no economic or technical reason for local calling areas to be any smaller than a LATA. In addition, there are good reasons for local calling areas to be at least as large. No evidence appears in the record to disprove the technical capability to provide such a product. There are no valid technical arguments

[85] *See Lundquist Direct* at 46-47.

[86] *See Lundquist Direct* at 47, 48.

against LATA wide calling. Finally, both the Florida Commission[87] and the New York Commission[88] have each approved LATA wide local calling areas. As a result, Florida and New York consumers will likely be the first to enjoy the benefits of these wider calling areas.

C. *As the FCC has preempted regulation of ISP-bound traffic, the interconnection agreement may not impose any limitations on this service nor impose any origination fees on this traffic.*

In the *ISP Remand Order,* the FCC determined that intercarrier compensation for ISP-bound traffic is within the jurisdiction of the FCC and that on a going forward basis, state commissions have been preempted from addressing the issue.[89] Thus, the Commission has no jurisdiction to impose access charges or other limitations on ISP in-bound traffic.[90] Similarly, inter-carrier compensation for ISP bound traffic is not appropriate subject for an interconnection agreements. [91]

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[87] Florida has adopted LATA-wide calling areas. *See* Florida Public Service Commission Special Commission Conference Agenda Issue 13 (Dec. 5, 2001): How should a "local calling area" be defined, for purposes of determining the applicability of reciprocal compensation? RECOMMENDATION: Staff recommends that parties be permitted to negotiate the definition of local calling area for the purposes of reciprocal compensation to be contained in their interconnection agreements. However, if negotiations fail, staff recommends that "local calling area" for the purposes of reciprocal compensation be defined as "all calls that originate and terminate in the same LATA."

[88] *Petition of Global Naps, Inc., Pursuant To Section 252 (B) Of The Telecommunications Act Of 1996, For Arbitration To Establish An Intercarrier Agreement With Verizon New York, Inc.* , Case 02-C-0006 (N.Y.P.S.C. May 22, 2002) ("*Global New York Order*").

[89] *ISP Remand Order* ¶ 82.

[90] Similarly, the Commission has no jurisdiction to determine who can or cannot terminate ISP-bound traffic. 47 CFR § 63.01(a) states that "[a]ny party that would be a domestic interstate communications common carrier is authorized to provide domestic, interstate services to any point and to construct, acquire or operate any domestic transmission line... ."

[91] *ISP Remand Order* ¶ 82.

D. Law and policy support Global's position on the remaining issues.

In addition to the above issues which were addressed during the hearing, Global responds to the following "brief-only" issues as follows:[92]

1. It Is Reasonable For The Parties To Include Language In The Agreement That Expressly Requires The Parties To Renegotiate Reciprocal Compensation Obligations If Current Law Is Overturned Or Otherwise Revised.

The proposed interconnection agreement submitted by the ILEC acknowledged that Global has a right to renegotiate the reciprocal compensation obligations if the current law is overturned or otherwise revised. The issue is simply whether the language proposed by the ILEC is adequate. Clearly it is not. Global submits the ILEC's change of law paragraph is inadequate[93] because it does not directly pertain to the *ISP Remand Order* as the Interconnection Agreement does not deal with compensation for ISP bound traffic. The *ISP Remand Order* is being revisited by the FCC and given its uncertainty, deserves special attention. If ultimately overturned, the ILEC acknowledges that Global should have the right to demand renegotiation, and, if necessary, further arbitration. The agreement should, therefore, clearly state this in light of the pending decision on this matter.[94]

[92] By agreement of Counsel, these issues were to be "brief-only". Testimony relating to these issues were stipulated to, with cross waived.

[93] *See* Exhibit B, Proposed Interconnection Agreement at §§ 4.4- 4.7.

[94] *See* Exhibit B, Proposed Interconnection Agreement GT&C Section 4; Glossary Sections 2.42, 2.56, 2.74 – 75; Interconnection Attachment Section 6.1.1, 7; Additional Services Attachment Section 5.1.

2. Two-Way Trunking Should Be Available To Global At Global's Request.

The ILEC does not oppose offering Global two-way trunks, but it insists that the parties need to agree on operational responsibilities and design parameters.[95] Unfortunately, the very fact this petition needs to be filed indicates there is now, and will likely be in future, disagreements on these operational aspects.

The ILEC claims that Global is in the best position to forecast both its traffic terminating on the ILEC's network and the ILEC's traffic terminating on Global's network.[96] Essentially, the ILEC is abrogating all its forecasting obligations. It is asking Global to make, and be responsible for, both carriers' traffic forecasts. This is discriminatory and burdensome. A more equitable resolution is that presented by Global, which has made specific recommendations in its proposed contract language at § 2.4 where each carrier forecasts the traffic that it believes will terminate on the other carrier's network.[97] This is precisely the conclusion reached by the New York Commission.[98]

In addition to the forecasting burden, Global proposes modifications which (1) exclude measured Internet traffic, (2) replaces "intrastate traffic" with "other traffic", (3) removes restrictions on the manner of connection, (4) impose industry standards for equipment used in provisioning, (5) assure equality in

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[95] *See* Petition for Arbitration, Case No. 02-0253 (April 10, 2002) at 24.

[96] *See id.* at 26.

[97] *See* Exhibit B, Proposed Interconnection Agreement at §§ Glossary Sections 2.93-95; Interconnection Attachment Sections 2.2-2.4, 5, 6, 9.

[98] *Global New York Order* at 16.

service quality and provisioning through the ASR process, (6) equalize trunk underutilization restrictions, (7) eliminate asymmetrical upfront payment requirements over and above what would actually be due, (8) eliminate restrictive subtending arrangement requirements, and, (9) clarify the definition of "traffic rate". These proposed modifications are necessary and in totality provide for a more equitable offering of two-way trunking than those proposed by Verizon.[99]

3. It Is Inappropriate To Incorporate By Reference Other Documents, Including Tariffs Into The Agreement Instead Of Fully Setting Out Those Provisions In The Agreement.

As a basic tenet of law, the contract, or, in this case, the interconnection agreement, should be the sole determinant of the rights and obligations of the parties to the greatest extent possible. The ILEC, in contrast, proposes numerous citations and references to tariffs and other documents outside "the four corners" of the interconnection agreement. The effect is that the ILEC is able to change the terms and conditions of the interconnection agreement without Global's assent, ignoring Global's need for the stability and certainty of its interconnection agreement with the ILEC. Although tariffs are the best example of how the ILEC can unilaterally make subsequent changes affecting the rights of the parties, the ILEC can also make changes to the CLEC handbook — which is not subject to Commission review and approval — to affect the parties' relationship.

[99] *See* Exhibit B, Proposed Interconnection Agreement at §§ 2.93-95; Interconnection Attachment Sections 2.2-2.4, 5, 6, 9.

The ILEC argues that a tariff filing is a matter of public notice and that Global has the right to contest such filing. This misses the point. A contract evidences a meeting of the minds. It should not change merely because the ILEC decides it should. "Giving Global a right to participate in a regulatory review of Verizon's tariff filings can hardly be equated with a right to veto."[100] Moreover, even though Global can contest a tariff, it needs to be made aware of the filing. Although filing a tariff at the Commission is deemed to be public notice, the reality is that Global would have to investigate each and every tariff filed every day to determine whether and how the contractual relationship between the parties may be changed should the proposed tariff be adopted.[101] Finally, even though Global can contest the tariff, Global will incur additional legal costs over and above those related to the negotiation and arbitration of the contract currently before this Commission. Worse still, there is no limit to the costs which the ILEC can impose because it can, if it wishes, re-file with impunity the same proposed tariff change or some other modification as frequently as it wishes.

Thus, tariffs should not be permitted to supercede interconnection agreement rates, terms and conditions of the contract.[102] The definitions contained in the ILEC's tariffs should not prevail over the definitions within the parties' interconnection

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[100] Direct Testimony of William J. Rooney at 4 (May 16, 2002).

[101] Should the Commission rule against Global, it should consider redistributing this burden on Verizon, since it is Verizon who is making the affirmative decision to alter the parties' contractual relationship. Specifically, Verizon should be compelled to provide direct notice to Global with service of any tariff and/or other change(s) which it believes will impact the relations of the parties.

[102] The California Commission's Draft Arbitrator's Report provides a compromise. "The issue of whether Verizon shall be allowed to reference its tariffs shall be determined on a case-by-case basis. I concur with GNAPs' contention that definitions or other terms and conditions in the ICA should not be superceded by tariffs. However, there are occasions where it is better to reference a tariff than to replicate all tariff provisions in the ICA." *In the Matter of Global NAPs, Inc. (U-6449-C) Petition for Arbitration of an Interconnection Agreement with Verizon California Inc. f/k/a GTE California Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996,* Draft Arbitrator's Report, Application 01-12-026 at 79 (Ca.P.U.C. April 8, 2002). This finding was not modified by subsequent Order.

agreement, and the parties' interconnection agreement should define "Tariff" so as to exclude incorporation of future tariffs.[103]

4. Global's Insurance Requirements Should Be Reasonable And In No Instance Exceed Requirements Imposed By Verizon.

The ILEC proposes burdensome insurance limits. It is inexplicable why PacBell would agree that Global has sufficient coverage while Verizon does not. Both are similarly situated ILECs. However, when Verizon was presented with the agreement between PacBell and Global resolving differences on insurance coverage, it still adamantly refused to change its stance. Its proposed requirements are as follows:

> (1) Commercial general liability insurance, on a per occurrence basis, with limits of at least $2,000,000; (2) commercial motor vehicle liability with limits of at least $2,000,000; (3) excess liability insurance, in the umbrella form, with limits of at least $10,000,000; (4) worker's compensation insurance with limits of not less than $2,000,000 per occurrence; and (5) all risk property insurance on a full replacement cost basis for all of GNAPs' real and personal property at a collocation site or otherwise located on or in any Verizon premises, facility, equipment or right-of-way.[104]

PacBell considers sufficient Global's current commercial general liability insurance coverage of $1 million with $10 million in excess liability coverage.[105] This insurance is more than adequate to cover any damages that may occur from Global's operations. "Verizon has not indicated any circumstance which has resulted in damages

[103] *Id* at 3.

[104] Direct Testimony of William J. Rooney at 6 (May 16, 2002); *see also* Section 21 of the General Terms and Conditions Section of the contract.

[105] In addition to such general liability coverage, Global agrees that if it operates vehicles in the state, it will purchase sufficient insurance to conform to all of the state's legal requirements for insurance coverage. Direct Testimony of William J. Rooney at 7 (May 16, 2002).

or injuries in excess of this amount committed by either GNAPs — or any other CLEC."[106]

The ILEC's burdensome requirements are discriminatory. The ILEC does not purchase insurance to assure compensation to Global in the event of damage. Instead, the ILEC "self-insures."[107] Although the ILEC has not excluded the possibility that Global can similarly self-insure, it has not provided Global with the criteria sufficient for Global to assert that it is self-insured.[108] Thus, Verizon is imposing costs where it has none.[109] This situation is indicative of the type of one-sided negotiations in which a monopoly with leverage engages.

5. Audits Should Only Be Permitted When Required And Should Be Limited To Traffic Reports Necessary To Verify The Underlying Support For Intercarrier Compensation.

The ILEC argues it should gain access to Global's records through the auspices of verifying bills. It states that "[t]he supplier (billing party) reasonably should be expected to carry the burden to justify its charges to the customer (the billed party)." On the face of it, this is reasonable. However, it ignores the fact that the ILEC already keeps computer records of call traffic exchanged between the parties and that the ILEC and Global have in place already a practice of verifying billing records on a monthly basis.

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[106] *Id.* at 6.

[107] *Id.* at 7.

[108] *See id.* at 7.

[109] California agrees wholeheartedly with Global's reasoning:

> GNAPs proposed language in Section 21 is adopted. It is more equitable to make the insurance requirements symmetrical between the parties. Also, Verizon's proposed coverage appears to be excessive, in light of the fact Pacific agreed to lower amounts in its ICA with GNAPs.

Global does not believe that the ILEC should be allowed to audit its accounts and records because much of the material contained in these records is competitively sensitive.[110] If Global were compelled to provide the ILEC with access to redacted records the costs of "sanitizing" these records would be prohibitive.[111] There really is no need for the ILEC to require this information since it should have its own records of calls exchanged with Global. Global is amenable, however, to providing traffic reports and Call Data Records ("CDRs") necessary to verify billing.[112] With CDRs available, the ILEC has no basis to insist on access to Global's sensitive.[113]

III. Conclusion.

Staunch defense of the status quo is counter to the pro-competition mandated by the *1996 Act*. More importantly, the failure to embrace a competition means passing up the benefits that competition brings, such as expanded local calling areas. In order to ensure Illinois consumers enjoy such benefits, this Commission should rule consistent with its own prior ruling and the FCC's Virginia Arbitration Order that each party should

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In the Matter of Global NAPs, Inc. (U-6449-C) Petition for Arbitration of an Interconnection Agreement with Verizon California Inc. f/k/a GTE California Inc. Pursuant to Section 252(b) of the Telecommunications Act of 1996, Draft Arbitrator's Report, Application 01-12-026 at 85 (April 8, 2002).

[110] Verizon's proposal includes "[t]he right to audit books, records, facilities and systems ***for the purpose of evaluating the accuracy of the audited party's bills.***" Direct Testimony of Jonathan B. Smith at 4 (May 16, 2002); *see also* Verizon's Proposed Interconnection Agreement at § 7 General Terms and Conditions.

[111] Direct Testimony of William J. Rooney at 10 (May 16, 2002).

[112] Global's proposed language is found at Exhibit B, Proposed Interconnection Agreement at GT&C § 7, Interconnection Attachment Section 6.3, 10.13. Additional Services Attachment § 8.5.4.

[113] Although the California Commission has proposed adoption of audits, these are limited:

> It is a standard practice in ICAs to include audit requirements. This does not mean that a carrier has limitless opportunities to make intrusive audits of its competitor's records. However, given the nature of the agreement between the parties, there is a need to be able to audit the traffic exchanged between the parties."Draft Arbitrator's Report, *In the Matter of Global NAPs, Inc. (U-6449-C) Petition for Arbitration of an Interconnection Agreement with Verizon California Inc. f/k/a GTE California Inc. Pursuant to Section*

be responsible for the costs associated with transporting telecommunication traffic to the single POI (Transport). Global should be permitted to assign its customers NXX code's that are "homed" in a central office switch outside of the local calling area in which the customer resigns (VNXX) and have all calls rated on the basis of the originating and terminating NXX codes just as the FCC determined, and that the ILEC's local calling area boundaries should not be imposed upon Global (Local Calling Area).

Date: July 22, 2002

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252(b) of the Telecommunications Act of 1996, Application 01-12-026 at 87 (April 8, 2002).

CERTIFICATE OF SERVICE

The undersigned hereby acknowledges that a copy of the foregoing INITIAL BRIEF OF GLOBAL NAPs was served by electronic mail this 22nd day of July, 2002 upon the attached Service List and the following:

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